MALAYSIA

In 1998, the U.S. trade deficit with Malaysia was $10.0 billion, an increase in the trade deficit of $2.9 billion from the U.S. trade deficit of $7.2 billion in 1997. U.S. merchandise exports to Malaysia were approximately $9.0 billion, a decrease of $1.9 billion (17.3 percent) from the level of U.S. exports to Malaysia in 1997. Malaysia was the United States'18th largest export market in 1998. U.S. imports from Malaysia were about $19.0 billion in 1998, an increase of $984 million (5.5 percent) from the level of imports in1997. The stock of U.S. foreign direct investment (FDI) in Malaysia in 1997 was $5.6 billion, an increase of nearly 6.1 percent from the level of U.S. FDI in 1996. Such investment was concentrated in Malaysia's manufacturing, energy, and financial sectors.

IMPORT POLICIES

Tariffs are the main instruments used to regulate the importation of goods in Malaysia. However, 17 percent of Malaysia's tariff lines (principally in the construction equipment, forestry, logging, agricultural, mineral, and motor vehicle sectors) are also subject to non-automatic import licensing designed to protect import-sensitive or strategic industries. Although the average applied MFN tariff rate of Malaysia has declined to approximately 8.1 percent, duties applicable to goods for which there is significant local production are often higher. For example, 15.8 percent of product tariff lines in Malaysia's tariff schedule have rates over 24 percent, 25.9 percent of tariff lines have rates over 15 percent, and several lines have rates well over 100 percent.

The level of tariff protection is generally lower on raw materials and increases for those goods with value-added content or which undergo further processing. During the current economic downturn, the Malaysian Government has urged Malaysians to purchase domestic products, instead of imports, whenever possible. Malaysia has been an active participant in multilateral and regional trade fora such as the World Trade Organization (WTO) and Asia-Pacific Economic Cooperation (APEC), and chaired APEC in 1998.

Import Restrictions on Motor Vehicles

Malaysia maintains several measures to protect the local automobile industry, including high tariffs and an import quota and licensing system on motor vehicles and motor vehicle parts. In order to qualify for certain tax/tariff incentives for domestic production, companies are required to satisfy local content requirements of 45 to 60 percent for passenger and commercial vehicles, and 60 percent for motorcycles. The Malaysian Government has announced that local content restrictions will be phased out by the year 2000 in accordance with its commitments under the WTO Agreement on Trade-Related Investment Measures (see "Investment Barriers" below). These measures have restricted the ability of U.S. firms to penetrate the Malaysian market. Custom tariffs and excise duties (up to 50 percent) for motorcycles are also significant barriers for U.S. companies. Malaysia is also considering new emissions standards for motorcycles which could restrict market access opportunities for imports.

Malaysia's 1988 fiscal year budget increased tariffs on a range of motor vehicles. The following table indicates the general range of the tariff rate increases, although the specific tariff increase depends on engine capacity.

Product Description	Applied Tariff Prior to FY 1998 Budget (%)	Current Applied Tariff (%)
Automobiles (CBU)	140-200	140-300
Automobiles (CKD)	42	80
Vans (CBU)	32	42-140
Van (CKD)	5	40
4wd/multipurpose (CBU)	50	60-200
4wd/multipurpose (CKD)	n/a	40
Motorcycle (CBU)	60	80-120
Motorcycle (CKD)	5	30

Restrictions on Construction Equipment

In October 1997, Malaysia imposed a restrictive licensing regime on imports of heavy construction equipment and raised import duties, as detailed below. In October 1996, it had raised duties on construction equipment from 5 to 20 percent. In addition the initial capital allowance tax deduction for imported heavy equipment will be reduced from 20 to 10 percent in the first year, and the annual allowance was reduced from between 12 percent and 20 percent to 10 percent.

Product Description	Applied Tariff Prior to FY 1998 Budget (%)	Current Applied Tariff (%)
Heavy Machinery & Equipment	0	5
Multi-purpose Vehicles	0-30	50
Special Purpose Vehicles	35	50
Construction Materials	5-25	10-30

Duties on High Value Food Products

Duties for processed and high value products, such as canned fruit, snack foods, and many other processed foods, range between 20 and 30 percent. The applied tariff on soy protein concentrate is 20 percent.

Duties on Alcoholic Beverages

Already high tariffs applicable to alcoholic beverages were increased in October 1998 (applicable tariffs are reflected below in Malaysian Ringitt (RM)).

Product Description	Pre-Oct. 1998 Tariff Rate (RM/dal)	Current Applied Tariff Rate (RM/dal)
Beer	74	89
Wine	100	120
Vermouth	100	120
Mead	98	118
Brandy	489	587
Liqueurs	82-100	98-100

Plastic Resins

In December 1993 Malaysia increased tariffs on some plastic resins from 2 to 30 percent for a five-year period. In late 1998 the tariff was lowered, however the current 20 percent tariff rate is still restrictive.

Tariff-Rate Quota for Chicken Parts

Although the government of Malaysia applies a zero import duty on chicken parts, imports are regulated through licensing and sanitary controls, and import levels remain well below the minimum access commitments established during the Uruguay Round.

Float Glass Tariff

Malaysia levies high duties on rectangular-shaped float glass of 65 sen per kilogram. In mid-1998, in an effort to ensure that importers cannot take advantage of the tariff differential on non-rectangular glass, Malaysian customs officials began to classify all float glass with an approximate rectangular shape as rectangular for duty purposes. This new rate equates to a 60-110 percent *ad valorem* tariff rate.

Malaysia

Rice Import Policy

The sole authorized importer of rice is a government corporation (Bernas) with the responsibility of ensuring purchase of the domestic crop and wide power to regulate imports.

Film and Paper Product Tariffs

Malaysia applies a 25 percent tariff on imported instant print film that is estimated to cause an annual trade loss of $10-$25 million for U.S. industry. In August 1994, the Malaysian Government raised tariffs on several categories of imported kraft liner board to between 20 and 30 percent, depending on the category. These tariff increases are subject to review every two years and were to be phased out after five years. The 1998 review reduced tariffs to 10 percent for all categories. Malaysian officials have indicated that there are no plans to phase out the tariffs in 1999.

Direct Marketing Companies

In 1998, Malaysia began to implement a policy requiring direct marketing companies to source a minimum of 80 percent of their product line locally as a condition for annual license renewal. Malaysia has also proposed to enforce more rigidly guidelines limiting foreign participation in the wholesale and retail trade sectors. As a condition of license renewal, Malaysian Government officials have also proposed restricting foreign equity to a maximum of 51 percent regardless of a company's current equity structure. License duration has been restricted to one year for most firms. The Ministry of Domestic Trade and Consumer Affairs has indicated that it may grant exceptions to these rules on a case-by-case basis. The United States urges Malaysia to implement a transparent regulatory system for the direct selling sector which does not impede trade, require established companies to divest involuntarily, or deter the entry of new market participants.

GOVERNMENT PROCUREMENT

Malaysia is not a party to the WTO Government Procurement Agreement. Malaysian Government policy calls for procurement to be used to support national objectives such as encouraging greater participation of bumiputras (ethnic Malays) in the economy, transfer of technology to local industries, reducing the outflow of foreign exchange, creating opportunities for local companies in the service sector, and enhancing Malaysia's export capabilities. As a result, foreign companies do not face a level playing field in competing for contracts and in most cases are required to take on a local partner before their bid will be considered. Some U.S. companies have voiced concerns about the transparency of decisions and decision making processes.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Malaysia is a member of the World Intellectual Property Organization (WIPO), the Berne Convention for the protection of literary and artistic works, and the Paris Convention. Malaysia provides copyright protection to all works (*inter alia* video tapes, audio material, and computer software) published in Berne Convention member countries regardless when the works were first published in Malaysia. Trademark infringement and patent protection have not been serious problem areas in Malaysia for U.S. companies. In March 1998, the Malaysian Government opened an intellectual property training center to develop and offer programs for government officials, agencies, attorneys, and the judiciary.

Police and legal authorities are generally responsive to requests from U.S. firms for the investigation and prosecution of retail-level copyright infringement cases. However, enforcement actions against organized, pirated production have served only to interrupt and not deter commercial-scale copyright infringement. In contrast, Malaysian officials have been responsive in working with industry to suppress end-user piracy of software. Joint government-industry end user anti-piracy campaigns and increased enforcement efforts reduced packaged computer software piracy to 70 percent in 1997, a 10 percent decline from 1996. Nevertheless, the widespread presence and frequency of pirated copyrighted works fixed on optical disks (including music and video CDs and CD-ROMs) has increased. U.S. industry reports that there are currently 22 optical disk factories with 90 production lines operating in Malaysia, with an estimated annual production capacity of 315 million units -- a figure that far exceeds local demand and authorized exports. More troubling still is the growing amount of pirated optical media found in markets worldwide which originated in Malaysia.

Although the Malaysian Government nominally regulates the establishment of OD plants by requiring a business license in order to operate, there is no systematic monitoring of plants to ensure that they are engaged in lawful activities. Pirated OD production has resulted in a flood of infringing products throughout Southeast Asia, and as far away as Europe and Latin America. The United States strongly urges the Malaysian Government to make combating optical disk piracy a top priority and to establish a legal framework for the effective regulation of OD production. Suppressing digital piracy is consistent with the Malaysia Government's objective to establish Malaysia as the preeminent locus of high-technology manufacturing and innovation in Asia.

Aspects of judicial and prosecutorial practices in Malaysia pertaining to IPR infringement also contribute to the high rates of piracy. Court dockets in the past have been backlogged; however, judicial efficiency appears to be improving. U.S. industry groups remain concerned, however, that while an infringement case is pending, known pirates are often released and resume IPR infringement. When litigation does result in penalties, courts rarely impose criminal sentences which undermines the deterrent effects of IPR enforcement. Penalties sought by Malaysian Government prosecutors are often inconsistent, resulting in different penalties for essentially similar charges of IPR infringement. Prosecutors also regularly fail to seek maximum allowed penalties. However, the Malaysian Attorney General in March 1998 directed prosecutors to file appeals for all copyright infringement cases in which courts imposed fines of less than RM1000. The effect of Malaysian enforcement efforts would be enhanced through the establishment of clear orders for enforcement officials to seize OD replicating equipment from factories caught producing pirated works and by clarifying rules pertaining to affidavits submitted by IPR owners and their resident legal representatives in Malaysia.

SERVICE BARRIERS

Basic Telecommunications

Under the WTO Basic Telecommunications Agreement, Malaysia made limited commitments on most basic telecommunication services and partially adopted the reference paper on regulatory commitments. Malaysia guaranteed market access and national treatment for these services only through acquisition of up to 30 percent of the shares of existing licensed public telecommunications operators, and limits market access commitments to facilities-based providers. At least two U.S. firms have investments in basic and enhanced telecommunications sectors.

Malaysia

Legal Services

Foreign lawyers may not practice Malaysian law or operate as foreign legal consultants, nor can they affiliate with local firms or use their international firm's name. Under the Legal Profession Act of 1976, the practice of Malaysian law is normally restricted to Malaysian citizens or permanent residents who have apprenticed with a Malaysian lawyer, are competent in Bahasa Malaysia (the official language), and have a local law degree or are an accredited British barrister at law. The Attorney General has authority to grant limited exceptions on a case-by-case basis, provided the applicant has seven years legal experience. Malaysian lawyers are required to practice in partnerships or sole proprietorships. Malaysian law does not allow for foreign legal consultancy, except on a limited basis in the Labuan International Offshore Financial Center. Persons not licensed as lawyers are subject to criminal penalties if they directly or indirectly undertake activities relating to the Malaysian legal system, including drafting documents.

Architectural Services

Foreign architectural firms can operate in Malaysia only as a joint venture on a specific project with the approval of the Board of Architects. Malaysian architectural firms may not have foreign architectural firms as registered partners. Foreign architects may not be licensed in Malaysia but are allowed to be managers, shareholders, or employees of Malaysian firms. Only licensed architects may submit architectural plans.

Engineering Services

Foreign engineers may be licensed by the board of engineers only for specific projects, and must be sponsored by the Malaysian company carrying out those projects. The license is only valid for the duration of the project. In general foreign engineers must be registered as a professional engineer in his or herb home country, have a minimum of 10 years experience, and have a physical presence in Malaysia of at least 180 days in one calendar year. To obtain temporary licensing for a foreign engineer, the Malaysian company must often demonstrate to the board that they cannot find a Malaysian engineer for the job. Foreign engineers are not allowed to operate independently of Malaysian partners, or serve as director or shareholder of a consulting engineering company. A foreign engineering firm can establish a non-temporary commercial presence if all directors and shareholders are Malaysian. Foreign engineering companies can collaborate with a Malaysian firm, but the Malaysian company is expected to design and required to submit the plans.

Accounting and Taxation Services

Foreign accounting firms can provide accounting and taxation services in Malaysia only through affiliates. All accountants who wish to provide auditing and taxation services in Malaysia must register with the Malaysian Institute of Accountants (MIA) before they can apply for a license from the Ministry of Finance. Citizenship or permanent residency is required for registration, and only degrees from local universities are recognized. Malaysian citizens or permanent residents who are members of at least one of the 11 recognized overseas professional bodies recognized by Commonwealth countries may also apply. However, the MIA has indicated that it is considering whether to allow members of the American Institute of Certified Public Accountants (AICPA) to become members of the MIA and provide services in Malaysia, subject to Malaysian examination procedures. The Institute is still evaluating whether all AICPA members will be allowed to take the exam, or whether this will be restricted to only those AICPA members which are nationals or permanent residents of Malaysia.

Banking

No new licenses are being granted to either local or foreign banks; foreign banks must operate as locally incorporated subsidiaries, and may be wholly foreign owned. Foreign companies are required to obtain 60 percent of their local credit from Malaysian banks.

Insurance

Branches of foreign insurance companies were required to incorporate locally under Malaysian law by June 30, 1998, however the Government has made individual extensions. Foreign share holding exceeding 49 percent is not permitted unless the Malaysian Government approves higher share holding levels. During the WTO Financial Services negotiations, Malaysia committed to allow existing foreign shareholders of locally incorporated insurance companies to increase their share holding to 5 percent upon entry into force of the WTO Financial Services Agreement. New entry by foreign insurance companies is limited to equity participation in locally incorporated insurance companies and aggregate foreign share in such companies may not exceed 30 percent.

Securities

Foreigners may hold up to 49 percent of the equity in a stockbroking firm. Currently there are 11 stockbroking firms which have foreign ownership and 20 representative offices of foreign brokerage firms. Fund management companies may be 100 percent foreign-owned if they provide services only to foreign investors, but they are limited to 70 percent foreign-ownership if they provide services to both foreign and local investors.

Advertising

Foreign content or film footage is restricted to a maximum of 20 percent per commercial, and only Malaysian actors may be used. The Government of Malaysia has an informal and vague guideline that commercials cannot "promote a foreign lifestyle." Advertising of alcohol and cigarette products is severely restricted.

Audio-Visual and Broadcast

The Malaysian Government maintains broadcast content quotas on both radio and television programming. Sixty percent of television programming is required to originate from local production companies owned by ethnic Malays. This share is scheduled to increase to 80 percent by the year 2000. Sixty percent of radio programming must be of local origin. The Malaysian Ministry of Information announced in January 1998 that it would study the use of the Broadcasting Act of 1958 as the means of imposing further conditions on television stations to provide additional air time to local programming. The Broadcasting Act is expected to be replaced in April 1999 by a new law, the Communications and Multimedia Act, which calls on industry groups to establish content standards and could be the basis for modification of existing local content restrictions. Foreign investments in terrestrial broadcast networks are strictly prohibited. As a condition for obtaining a license to operate, video rental establishments are required to have 30 percent local content in their inventories.

INVESTMENT BARRIERS

Malaysia encourages direct foreign investment particularly in export-oriented manufacturing and high-tech industries, but retains considerable discretionary authority over individual investments. The Malaysian Government has used this authority to restrict foreign equity (normally to a maximum of 30 percent) and to require foreign firms to enter into joint ventures with local partners. To alleviate the current economic downturn, Malaysia announced it will relax foreign-ownership and export requirements in the manufacturing sector until December 31, 2000 for those companies producing goods that do not compete with local producers. Malaysia for several years has confronted a shortage of workers in its market. Although this situation has been eased recently due to the economic downturn, foreign companies experience difficulty with the efficient operation of manufacturing facilities due to the unavailability of workers. Malaysia is reluctant to address the labor shortage by allowing foreign workers to enter the country. In addition, foreign firms also face restrictions in the number of expatriate workers they are allowed to employ.

Trade-Related Investment Measures

Malaysia has notified the WTO of certain measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMs). The measures deal with local content requirements in the automotive sector and use of export-performance as a criterion for foreign investors receiving preferential tax treatment. Proper notification allows developing country WTO members to maintain such measures for a five-year transitional period after entry into force of the WTO. Malaysia, therefore, is required to eliminate these measures before January 1, 2000.

ELECTRONIC COMMERCE

Malaysia currently applies no special restrictions on products or services traded via electronic commerce. Products which are ordered via the Internet and subsequently imported are subject to applicable import duties. Engineering services may not be provided via Internet unless the engineer is properly licensed.

OTHER BARRIERS

U.S. companies have indicated that they would welcome improvements in the transparency of Malaysian Government decision-making and procedures, and limits on anti-competitive practices. A considerable proportion of government projects and procurement are awarded without transparent, competitive bidding. The Malaysian Government has declared that it is committed to fighting corruption. To promote that objective, Malaysia maintains an anti-corruption agency that is part of the Office of the Prime Minister. The agency has the independent power to conduct investigations and is able to prosecute cases with the approval of the attorney general.